Zaina Abidin bin Hamid @ S Maniam & Ors v Kerajaan Malaysia & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01–90 OF 2004
LOW HOP BING, KN SEGARA AND AHMAD MAAROP JJCA
25 JUNE 2009

Civil Procedure — Originating summons — Striking out — Declaration on interpretations concerning constitutionality of federal and state legislations — Whether abuse of process under O 18 r 19(1)(d) of the Rules of the High Court 1980 — Whether originating summons obviously unsustainable

Constitutional Law — Fundamental liberties — Right to religious freedom — Plaintiff sought declarations on interpretations concerning constitutionality of federal and state legislations — Whether art 121(1A) of the Federal Constitution taken away jurisdiction of civil courts to interpret written laws of state enacted for administration of Muslim Law

The first plaintiff, a Malaysian of Indian descent, was born to parents who were Malaysians, of Indian descent. The first plaintiff submitted that throughout his formative years, his parents, who were also Malaysians of Indian descent, followed a Hindu way of life and brought him up as a Hindu. However, the identity cards of the first plaintiff's parents showed that they were Muslims. The first plaintiff by a deed poll dated 16 March 1973 adopted a new Hindu name. The first plaintiff was the natural and lawful father of the second to fourth plaintiffs and they were all under the age of majority. The marriage of the first plaintiff to his Hindu wife was registered under the Law Reform (Marriage and Divorce) Act 1976. The first plaintiff by the originating summons ('OS') sought the following declarations, inter alia; (i) that an interpretation of the words 'his religion' in art 11(1) of the Federal Constitution meant the religion which a person chooses to profess and practice as his religion; (ii) that the phrase 'person(s) professing the religion of Islam' in various provisions of the Federal Constitution are to be interpreted to mean 'a person who acknowledges himself to be a believer of the religion of Islam'; (iii) that the definition of a person as a 'Muslim' in s 2 of the Administration of Islamic Law (Selangor) Enactment 1989 is null and void; (iv) that any requirement that the plaintiffs should obtain permission from the Syariah Court before Islamic law ceases to apply to them be considered null and void; and (v) that the first plaintiff had the right to

determine the religion of his children. Collectively, the first to the third defendants via the Government of Malaysia contended that the plaintiffs' filing of the OS constituted an abuse of the process of the court as provided under O 18 r 19(1)(d) of the Rules of the High Court 1980 ('RHC'). However, it was argued by the fourth plaintiff that the OS was not an abuse of process as the plaintiffs were asking the High Court to declare certain statutes unconstitutional but nevertheless, the OS was struck out. Hence, the plaintiffs' appeal.

Held, allowing the appeal with costs here and below:

(1) The declarations sought by the plaintiffs in the OS revolved around the interpretation concerning the constitutionality of legislation enacted by the Parliament and the State Legislative Assembly of Selangor Darul Ehsan. Although, art 121(1A) of the Federal Constitution effective from 10 June 1988 had taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the Syariah Courts, it does not take away the jurisdiction of the civil courts to interpret written laws of the state enacted for administration of Muslim law; *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1 referred (see para 11).

(2) Under O 18 r 19(3) of the RHC the OS is treated as if it were a pleading for the purposes of O 18 r 19(1) of the RHC. The court has an inherent jurisdiction to prevent an abuse of its process; *Raja Zainal Abidin bin Raja Hj Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16 referred (see para 13).

(3) The categories of abuse of process are never closed and will certainly proliferate pursuant to the myriad of circumstances available from the factual matrix found in each particular case; *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11 referred (see para 16).

(4) The governing principles are trite. In seeking to strike out the OS on grounds of abuse of process under O 18 r 19(1)(d) of the RHC, the first, second and third defendants must satisfy the test of proving that the OS was obviously unsustainable (see para 18).

(5) Where a litigant brings an action to protect his rights, the use of the remedies afforded to him by the law cannot be an abuse of the court's process; *Gasing Heights Sdn Bhd v Aloyah bte Abdul Rahman & Ors* [1996] 3 MLJ 259 referred (see para 19).

(6) The plaintiffs who were seeking recourse by requesting the civil courts to interpret the constitutionality of written laws enacted in Parliament

and the State Legislative Assembly certainly could not constitute an abuse of process. Hence, the OS was not unsustainable. It must be heard and determined on merits. The learned judicial commissioner had erred in striking out the OS. The plaintiffs' appeal and the order of the High Court was set aside. The OS was reinstated and remitted to the High Court for hearing on merits (see paras 20–21).

[Bahasa Malaysia summary

Plaintif pertama, berketurunan India Malaysia, dilahirkan oleh ibubapa yang merupakan warganegara Malaysia berketurunan India. Plaintif menghujah bahawa sejak kecil lagi, ibu bapanya, yang juga merupakan keturunan India Malaysia, mengikut cara hidup Hindu dan membesarkannya sebagai seorang Hindu. Walau bagaimanapun, kad pengenalan ibubapa plaintif pertama menunjukkan bahawa mereka beragama Islam. Melalui surat ikatan pol bertarikh 16 Mac 1973, plaintif pertama menggunakan nama Hindu yang baru. Plaintif pertama merupakan bapa kandung yang sah kepada plaintif kedua hingga keempat dan mereka semuanya di bawah umur majoriti. Perkahwinan plaintif pertama dengan isteri Hindunya didaftarkan di bawah Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976. Melalui saman pemula ('SP'), plaintif pertama menuntut deklarasi-deklarasi seperti berikut, iaitu; (i) bahawa tafsiran perkataan agamanya dalam perkara 11(1) Perlembagaan Persekutuan bermaksud agama yang dipilih untuk dianuti dan dipraktis sebagai agamanya; (ii) bahawa frasa orang yang menganuti agama Islam dalam pelbagai peruntukan Perlembagaan Persekutuan ditafsirkan sebagai 'a person who acknowledges himself to be a believer of the religion of Islam'; (iii) bahawa definisi sebagai seorang 'Muslim' dalam s 2 Enakmen Pentadbiran Undang-Undang Islam (Selangor) 1989 batal dan tak sah; (iv) keperluan bahawa plaintif-plaintif perlu mendapatkan kebenaran daripada Mahkamah Syariah di bawah Undang-Undang Islam dianggap batal dan tak sah; dan (v) bahawa plaintif pertama mempunyai hak untuk menentukan agama anak-anaknya. Secara kolektifnya, defendan pertama hingga ketiga melalui Kerajaan Malaysia menghujah bahawa pemfailan SP oleh plaintif-plaintif merupakan penyalahgunaan proses mahkamah sepertimana yang diperuntukkan di bawah A 18 k 19(1)(d) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Walau bagaimanapun, ianya dipertikaikan oleh plaintif keempat bahawa SP bukan merupakan penyalahgunaan proses memandangkan plaintif-plaintif memohon Mahkamah Tinggi untuk membuat deklarasi bahawa beberapa statut tidak mengikut perlembagaan, namun begitu, SP dibatalkan. Maka, rayuan oleh plaintif-plaintif.

Diputuskan, membenarkan rayuan dengan kos di mahkamah ini dan Mahkamah Tinggi:

(1) Deklarasi-deklarasi yang dituntut oleh plaintif-plaintif dalam SP ialah

berkenaan tafsiran keperlembagaan perundangan yang digubal oleh Parlimen dan Dewan Undangan Negeri Selangor Darul Ehsan. Walaupun perkara 121(1A) Perlembagaan Persekutuan yang berkuat kuasa sebelum 10 Jun 1988 telah mengambil bidang kuasa mahkamah sivil berkenaan bidang kuasa Mahkamah Syariah, ia tidak mengambil bidang kuasa mahkamah sivil untuk mentafsirkan undang-undang bertulis negeri yang digubal untuk pentadbiran undang-undang Islam; *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1 dirujuk (lihat perenggan 11).

(2) Di bawah A 18 k 19(3) KMT, SP adalah seperti pliding bagi tujuan-tujuan A 18 k 19(1) KMT. Mahkamah mempunyai bidang kuasa kuasa sedia ada untuk menghalang penyalahgunaan prosesnya; *Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16 dirujuk (lihat perenggan 13).

(3) Kategori-kategori penyalahgunaan proses tidak terhad dan berkembang menurut pelbagai keadaan daripada fakta matriks yang didapati dalam setiap kes; *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11 dirujuk (lihat perenggan 16).

(4) Prinsip-prinsip yang mentadbirkan adalah tetap. Dalam menuntut untuk membatalkan SP atas dasar penyalahgunaan proses di bawah A 18 k 19(1)(d) KMT, defendan pertama, kedua dan ketiga perlu memenuhi ujian bagi membuktikan bahawa SP tidak boleh dikekalkan (lihat perenggan 18).

(5) Apabila litigan memulakan tindakan untuk melindungi haknya, penggunaan remedi-remedi yang diberikan kepadanya oleh undang-undang bukanlah penyalahgunaan proses mahkamah; *Gasing Heights Sdn Bhd v Aloyah bte Abdul Rahman & Ors* [1996] 3 MLJ 259 dirujuk (lihat perenggan 19).

(6) Plaintif-plaintif yang mencari jalan keluar dengan meminta mahkamah sivil untuk mentafsirkan keperlembagaan undang-undang bertulis yang digubal di Parlimen dan Dewan Undangan Negeri bukanlah satu penyalahgunaan proses. Oleh itu, SP dikekalkan. Ia perlu dibicarakan dan ditentukan atas merit. Pesuruhjaya kehakiman yang bijaksana telah khilaf dalam membatalkan SP. Rayuan plaintif-plaintif dan arahan Mahkamah Tinggi diketepikan. SP dikembalikan dan diremit ke Mahkamah Tinggi untuk perbicaraan atas merit (lihat perenggan 20–21).]

Notes

For cases on right to religious freedom, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2178–2182.

For cases on striking out, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4906–4912.

Cases referred to

Abdul Kahar bin Ahmad v Kerajaan Negeri Selangor (Kerajaan Malaysia, intervener) & Anor [2008] 3 MLJ 617; [2008] 4 CLJ 309, FC (refd)
Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd [1989] 2 MLJ 423, HC (refd)
Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 4 CLJ 7; [1993] 2 AMR 1969, SC (refd)
Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1, SC (refd)
Johnson v Gore Wood & Co (A Firm) [2002] 2 AC 1, HL (refd)
Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors [1998] 1 SLR 374, CA (refd)
Gasing Heights Sdn Bhd v Aloyah bte Abdul Rahman & Ors [1996] 3 MLJ 259, HC (refd)
Grainger v Hill (1838) 4 Bing NC 212 (refd)
Hadi bin Hassan v Suria Records Sdn Bhd & Ors [2005] 3 MLJ 522; [2005] 5 AMR 235, HC (refd)
Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor [2008] 2 MLJ 11; [2008] 2 AMR 6, CA (refd)
Lai Kim Loi v Dato' Lai Fook Kim & Anor [1989] 2 MLJ 290, SC (refd)
Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101; [2007] 5 CLJ 253, FC (refd)
Manson v Vooght [1999] BPIR 376, CA (refd)
Mohamad Ghazali bin Shuib & 8 Ors v Amalan Tepat Sdn Bhd & Anor [2008] 3 AMR 149, HC (refd)
Penang Port Commission v Kanawagi s/o Seperumaniam [2008] 6 MLJ 686; [2008] 6 AMR 250, CA (refd)
Raja Zainal Abidin bin Raja Hj Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16; [1993] 2 AMR 2073, SC (refd)
Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489, FC (refd)
Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors [1998] 1 MLJ 607; [1998] 2 AMR 997; [1998] 1 CLJ 960, CA (refd)

Legislation referred to

Administration of Islamic Law (Selangor) Enactment 1989 s 2
Courts of Judicature Act 1964 s 14
Federal Constitution arts 11(1), 121(1A), 160
Law Reform (Marriage and Divorce) Act 1976
National Registration Regulations 1990 regs 5, 14, Schedule
Rules of Court 1996 [SG] O 18 r 19(1)(d)
Rules of the High Court 1980 O 18 rr 19, 19(1), (1)(d), (3), O 15 r 16, O 92 r 4

Appeal from: Originating Summons No 21–31 of 2002 (MT4) (High Court, Shah Alam)

Fahri Azzat (K Shanmuga with him) (Kanesalingam & Co) for the appellants.
Azizah Nawawi (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.
Zauyah Be Loth Khan (Md Azhari Abu Hanit with her) (State Legal Advisor, Selangor) for the second respondent.
Siti Rahimah Khalil (Aishah Kama & Sabri) for the third respondent.
Edmund Bon Tai Soon (Chan Yat Hee & Associates) for the fourth respondent.

Low Hop Bing JCA (delivering judgment of the court):

APPEAL

[1] This appeal is lodged by the appellants ('the plaintiffs') against the decision of the Shah Alam High Court in striking out the plaintiffs' originating summons ('the OS').

[2] For brevity and convenience, a reference hereinafter to an order and a rule, and to an article, is a reference respectively to that order and rule in the Rules of the High Court 1980, and the article in the Federal Constitution.

PRAYERS FOR DECLARATION

[3] Pursuant to O 18 r 19, O 15 r 16 and O 92 r 4, the OS seeks the following declarations:

(a) An interpretation that the words 'his religion' in art 11(1) means the religion which a person chooses to profess and practise as his religion (para 1 of the OS) and the phrase 'person(s) professing the religion of Islam' in various provisions of the Federal Constitution are to be interpreted to mean 'a person who acknowledges himself to be a believer of the religion of Islam' (para 2);

(b) The definition of a person as a 'Muslim' in s 2 of the Administration of Islamic Law (Selangor) Enactment 1989 is null and void (para 3);

(c) Any requirement that the plaintiffs should obtain permission from the Syariah Court before Islamic law ceases to apply to them be considered null and void (para 4);

(d) The plaintiffs are no longer muslims (para 5);

(e) The first plaintiff has the right to determine the religion of his children (who are the other plaintiffs herein) (para 6);

(f) Any arrest and/or detention of the plaintiffs by the second defendant pursuant to state Islamic law (para 7) and the issuance of threat or issuance of any document that requires the plaintiffs to do or omit to do any act is contrary to law (para 8);

(g) Any treatment of the plaintiffs as Muslims (para 9) and any compulsion on the plaintiffs to undergo acts which relate to Islam are contrary to law (para 10);

(h) Regulations 5 and 14, and the Schedule to the National Registration Regulations 1990 are inconsistent with the Federal Constitution (para 11);

(i) The plaintiffs shall in all respects of public and private life be recognised by their new names (para 12) and as being Hindus (para 13);

(j) The first defendant shall cause the educational institutions, in which the second to fourth plaintiffs were enrolled, not to compel or require them to undergo any instruction in Islam (para 14); and

(k) The plaintiffs are not to be considered as Malays within the meaning of art 160 (para 15).

FACTUAL BACKGROUND

[4] The first plaintiff is a Malaysian of Indian origin, born of parents who are also Malaysians of Indian origin but are shown in their identity documents as Muslims. The first plaintiff says that throughout his formative years, his parents followed a Hindu way of life and brought him up as a Hindu.

[5] The first plaintiff by a deed poll dated 16 March 1973 (*Gazette* GN No 1686 of 1973 dated 24 May 1973) adopted a new Hindu name.

[6] The first plaintiff is the natural and lawful father of the second to fourth plaintiffs who, at the time the OS was filed, were all under the age of majority. The marriage of the first plaintiff to his Hindu wife, ie the mother of the second to fourth plaintiffs, was registered under the Law Reform (Marriage and Divorce) Act 1976.

ABUSE OF PROCESS

[7] The first to third defendants viz the Government of Malaysia through learned senior federal counsel Hajah Azizah Hj Nawawi, the Government of Selangor Darul Ehsan through learned legal adviser Datin Paduka Zauyah Be bt Loth Khan (assisted by Mr Md Azhari bin Abu Hanit); and the Majlis

Agama Islam Selangor through learned counsel Ms Siti Rahimah Kalil collectively contended that the plaintiffs' filing of the OS constitutes an abuse of the process of the court under O 18 r 19(1)(d). A

[8] It was argued by learned counsel Mr Edmund Bon Tai Soon for the fourth defendant; and Mr Fahri Azzat (Mr K Shanmuga with him) for the plaintiffs that the OS is not an abuse of process as the plaintiffs are asking the High Court to declare certain statutes unconstitutional. B

[9] The collective contention presented for the first to third defendants was sustained by the High Court, as a result of which the OS was struck out. C

[10] In our view, the question raised for consideration by this court may be formulated as follows:

> Does the plaintiffs' filing of the OS, to seek the assistance of the High Court in relation to the declarations prayed for in the OS, constitute an abuse of the process of the court so as to warrant the OS to be struck out? D

[11] It is abundantly clear to us that the declarations sought by the plaintiffs in the OS revolve around the interpretation concerning the constitutionality of legislation enacted by Parliament and the State Legislative Assembly of Selangor Darul Ehsan. While art 121(1A), effective from 10 June 1988, has taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the Syariah courts, it does not take away the jurisdiction of the civil courts to interpret written laws of the state enacted for the administration of muslim law: per Hashim Yeop A Sani CJ (Malaya) (as he then was) in *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1 (SC). Our civil courts are entrusted with the responsibility of determining the issue of constitutionality of legislation: per Dzaiddin SCJ (later CJ (Malaya)) in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 (FC). Interpretation of the Federal Constitution vis-à-vis other written laws is a matter for the civil courts: per Abdul Hamid Mohamad FCJ (later Chief Justice) in *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101 at p 123 para [76]; [2007] 5 CLJ 253 (FC) at p 288 para [76], and also in *Abdul Kahar bin Ahmad v Kerajaan Negeri Selangor (Kerajaan Malaysia, intervener) & Anor* [2008] 3 MLJ 617; [2008] 4 CLJ 309 (FC). E F G H

[12] The concept of abuse of process relied on by the first to third defendants deserves to be put in proper perspective. I

[13] In civil litigation, abuse of process constitutes a ground empowering the court, at any stage of the proceedings, to strike out or amend any pleading or endorsement of any writ in the action under O 18 r 19(1)(d), or under the court's inherent jurisdiction housed in O 92 r 4: see *Malaysian Court Practice MLJ 2007 Desk Edition* at p 247 para 18.19.7. Under O 18 r 19(3), the OS is treated as if it were a pleading for the purposes of O 18 r 19(1). The court has an inherent jurisdiction to prevent an abuse of its process: *Raja Zainal Abidin bin Raja Hj Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16; [1993] 2 AMR 2073 (SC).

[14] The term 'an abuse of the process of the court' under O 18 r 19(1)(d) (Singapore), which is in pari materia with our O 18 r 19(1)(d), has been given a wide interpretation by the courts and includes considerations of public policy and the interests of justice. It signifies that the process of the court must be used bona fide and properly and must not be abused: *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors* [1998] 1 SLR 374 at p 384 (CA) Singapore.

[15] In *Johnson v Gore Wood & Co (A Firm)* [2002] 2 AC 1 (HL) at p 29, Lord Bingham of Cornhill referred to *Manson v Vooght* [1999] BPIR 376 (CA) at pp 388–389, where May LJ lamented, inter alia, that 'Abuse of process is a concept that defies precise definition in the abstract'.

[16] The categories of abuse of process are never closed and will certainly proliferate pursuant to the myriad of circumstances available from the factual matrix found in each particular case: *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11; [2008] 2 AMR 6 (CA).

[17] Illustrations of abuse of process include the following:

(a) The plaintiff knowing that he never had a cause of action in the first place, and yet proceeded with his action in order to extort a relief he was never entitled to: *Grainger v Hill* (1838) 4 Bing NC 212 at p 271B-C;

(b) Multiplicity of actions: *Lai Kim Loi v Dato' Lai Fook Kim & Anor* [1989] 2 MLJ 290 (SC);

(c) Where the court has held that there was a triable issue in the plaintiff's writ action, the subsequent filing of an originating summons by the same plaintiff, thereby obtaining summary judgment on the originating summons based on affidavits only, in the absence of a trial: *Penang Port Commission v Kanawagi s/o Seperumaniam* [2008] 6 MLJ 686; [2008] 6 AMR 250 (CA);

(d) Resorting to a process with an intention to embarrass the defendant: *Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd* [1989] 2 MLJ 423;

(e) Where the process of the court has not been used in a bone fide manner and has been abused: *Hadi bin Hassan v Suria Records Sdn Bhd & Ors* [2005] 3 MLJ 522; [2005] 5 AMR 235; and

(f) Commencing an action against a judge of the High Court contrary to the judicial immunity expressly conferred on the judge under s 14 of the Courts of Judicature Act 1964: *Indah Desa Saujana Corp Sdn Bhd*.

[18] With specific reference to the instant appeal, in seeking to summarily strike out the OS on grounds of abuse of process under O 18 r 19(1)(d), the first, second and third defendants must satisfy the test of proving that the OS is obviously unsustainable. The governing principles are trite. The locus classicus is to be found in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7; [1993] 2 AMR 1969 (SC) where the then Supreme Court speaking through Mohamed Dzaiddin SCJ (later CJ (Malaya)) explained, in essence, as follows:

(1) It is only in plain and obvious cases that recourse should be had to the summary process under this rule and summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'; and

(2) So long as the pleading discloses some cause of action or raises some question fit to be decided by the judge, the mere fact that the case was weak and not likely to succeed at the trial was no ground for the pleading to be struck out.

(See also: *Stamford Holdings Sdn Bhd v Kerajaan Negeri Johor & Ors* [1998] 1 MLJ 607; [1998] 2 AMR 997; [1998] 1 CLJ 960 (CA); *Mohamad Ghazali bin Shuib & 8 Ors v Amalan Tepat Sdn Bhd & Anor* [2008] 3 AMR 149 (HC) at pp 155 and 156).

[19] Where a litigant brings an action to protect his rights, the use of remedies afforded to him by the law cannot be an abuse of the court's process: *Gasing Heights Sdn Bhd v Aloyah bte Abdul Rahman & Ors* [1996] 3 MLJ 259 (HC) per Mahadev Shankar J (later JCA) at p 271.

[20] A substantially similar situation arises in the instant appeal. Here, the plaintiffs are actually seeking recourse by requesting the civil courts to interpret the constitutionality of written laws enacted in Parliament and the State Legislative Assembly. This certainly cannot constitute an abuse of process. Hence, the OS is not obviously unsustainable. It must be heard and

A determined on merits.

CONCLUSION

B **[21]** The answer to the above question is in the negative. The learned judicial commissioner has erred in striking out the OS. The plaintiffs' appeal is allowed. The order of the High Court is set aside. The OS is reinstated and remitted to the High Court for hearing on merits. It is now fixed for mention in the Shah Alam High Court on Monday 29 June 2009. Costs of RM3,000 here and in the court below to be jointly paid by the first, second and third C defendants to the plaintiffs. Deposit to be refunded to the plaintiffs.

Appeal allowed with costs here and below.

D Reported by Mashrifah Ravendran

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